

## Part One: Trustee Relationships

### Introduction

Welcome to the latest phase of our #PensionsTensions campaign, exploring the current challenges faced by trustees and sponsoring employers of occupational pension schemes. Effective risk management is undoubtedly the key to running a pension scheme well and is the dominant theme in The Pensions Regulator's (TPR's) draft single code of practice. Each factsheet in this series sets out our top "red risks"; as well as some mitigation tips and a #PressureMeasure that shows whether we think the pressure on trustees and sponsoring employers is increasing or decreasing. Each factsheet assumes that there is an established risk management system on which additional measures can be built. Don't forget to check our time-saving tip!

In this factsheet, we examine the risks associated with trustee relationships, focusing on relationships with sponsoring employers and scheme members.

### Comment

Trustees' relationships with their members (principally through written communications) and sponsoring employers continue to face evolving challenges. These #PensionsTensions have only grown over the last 12 months.

### Relationships with Members

The basic principle that member communications should be accurate, legally compliant and easy to understand remains unchanged, but the tension between these principles can be difficult to reconcile when communicating about complex issues.

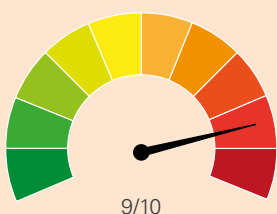
Inaccurate member communications are a frequent cause for member complaints, and risks in this area are difficult to mitigate fully as issues can lie dormant for years before being discovered, and members may have relied in good faith on the incorrect communication. Very few members understand, let alone accept, that if there is an inconsistency between the rules and member communications, the scheme's rules should and invariably will prevail.

Achieving the right balance between compliance and helpfulness in pensions member communications can be a delicate art and trustees wishing to provide more than generic information risk straying into regulated advice territory. Facilitating access to an independent financial adviser (IFA) can be a way to address this issue, but there are a number of compliance issues to consider before doing so. The Pensions Ombudsman has recently issued a helpful statement on its views on providing members with information about IFAs.

The challenges presented by the pandemic will also have affected many trustee boards' ability to communicate with members in a timely manner. But member patience may be wearing thin, and with a degree of home working likely to be here to stay among trustees and scheme administrators alike, processes should be reviewed and updated as required in order to meet members' expectations. Those expectations may increasingly favour electronic communications – but trustees should ensure any switch to e-communications meets statutory requirements. Our [quick guide](#) to e-communications contains a handy checklist.

Many trustee boards will also experience member complaints. Transfer values are a common source of complaints, especially where a transfer has been made to an arrangement that later turns out to have been unsuitable. There are real tensions between trustee boards' desire to protect their members from transfers that may be unsuitable (whether or not a scam is suspected) and members' statutory rights. Good communications about the risks associated with pension transfers and the importance of obtaining independent advice will both ensure that trustees are meeting the standards expected by TPR and provide some reassurance that members are proceeding with transfers with their eyes open. Scammers have developed sophisticated ways of "dressing up" scam arrangements to look legitimate, so it can be extremely difficult to spot a scam within the limited window in which a transfer has to be processed. Regulations to be made under the Pension Schemes Act 2021 (PSA21) will refine the position in terms of where a statutory right to a transfer exists. These additional powers may require trustees to make more difficult decisions to refuse transfer requests (which may lead to an increase in complaints about those decisions). Robust due diligence processes and transfer policies will be necessary to minimise that risk.

### #PressureMeasure: Trustee Relationships



"We anticipate that trustee relationships with both members and employers will come under greater strain in the year ahead"





## Relationships with Employers

The need for timely and open communications between trustee boards and sponsoring employers (balancing the need for transparency with protecting sensitive commercial data, while also managing conflicts of interest) was highlighted as a key risk area in our 2019 pensions risk [survey](#). Tensions in this area are expected to come into sharp focus while trustee boards and sponsoring employers navigate their new duties under the PSA21.



We have previously highlighted information-sharing agreements as a useful tool to help maintain clear lines of communication and enhance trustee-employer relationships. Where significant corporate activity is anticipated, it can be helpful to have an established framework in place setting out what information will be shared, so as to manage parties' expectations and prevent unnecessary tensions from arising. Following upcoming changes to the notifiable events regime under the PSA21, communications processes may need to be reviewed and updated in respect of corporate activity that potentially needs to be reported to TPR before the event.

The flow of personal data between employers and trustees is also coming under closer scrutiny. The Information Commissioner's Office (ICO) published the final version of its Data Sharing Code of Practice in December 2020, which confirms that the ICO expects formal data-sharing agreements to be implemented where personal data is shared between two independent data controllers (which, therefore, includes trustees and sponsoring employers who share personal data between themselves).

Affordability issues were common #PensionsTensions in 2020 as the pandemic took hold. Employers in many sectors will continue to face financial pressures for the foreseeable future, and trustee boards will need to continue to show understanding and forbearance. Difficult conversations about funding cannot be put off forever, however, and tensions in this area may, therefore, intensify where sponsoring employers want to re-invest profits in growing their business. We will discuss areas of tension in relation to funding and investments in a future publication in this series.

	<p><b>Red Risk Flags</b></p> <ul style="list-style-type: none"> <li>• Are there known issues with historical member communications that could lead to future member complaints?</li> <li>• How well are members' expectations being managed, both in relation to their actual benefit entitlement and administrative processes? Are your systems keeping up with best practice?</li> <li>• Are adequate information-sharing and data-sharing processes in place between the trustees and the employer?</li> <li>• Are trustees seeing an increase in "pension scam" complaints (particularly from claims handling firms)?</li> </ul>
	<p><b>Mitigation Tips</b></p> <ul style="list-style-type: none"> <li>• Observe any patterns in member complaints for scams, administration errors or communication problems.</li> <li>• Imaginative presentation style and formatting can give member communications on complex subjects a new dimension by making them more engaging and easier to understand.</li> <li>• Review and, as necessary, revise any existing information- and data-sharing protocols in readiness to comply with the requirements of the PSA21 and the ICO's expectations.</li> <li>• An open dialogue is key to ensuring both trustees and employers can manage each other's expectations and promote the success of the sponsor's business, as well as the long-term security of the scheme.</li> </ul>
	<p><b>What the regulator says</b></p> <p>"A data sharing agreement helps all the parties be clear about their roles; sets out the purpose of the data sharing; covers what happens to the data at each stage; and sets standards. It should help you to justify your data sharing and demonstrate that you have been mindful of, and have documented, the relevant compliance issues." (ICO's Data Sharing Code of Practice)</p>
	<p><b>Time-saving tip</b></p> <p>Agreeing an information-sharing protocol before one is needed can save time and stress in the long-run. If a new or revised data-sharing agreement is also required in order to meet the ICO's expectations, consider documenting both arrangements together, as this would ensure consistency – and potentially save on legal fees.</p>

## Key Contacts

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